

² The Board notes that, following the March 17, 2021 merit decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work for the period December 27, 2020³ through January 29, 2021 causally related to the accepted November 10, 2020 employment injury; and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing.

FACTUAL HISTORY

On November 18, 2020 appellant, then a 29-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 10, 2020 she sustained an injury when she accidentally closed her right hand in the door jam of the driver door while in the performance of duty. She stopped work on November 11, 2020. By decision dated December 14, 2020, OWCP accepted appellant's claim for crushing injury of the right hand.

OWCP received a December 9, 2020 report by Dr. George S.M. Dyer, a Board-certified orthopedic hand surgeon, who opined that appellant should be off due to a work-related injury. Dr. Dyer described that on November 10, 2020 she closed her right hand in a mail truck and she experienced pain and swelling. He recounted that appellant tried to return to work on November 28, 2020, but she experienced significant pain. On physical examination of her right upper extremity, Dr. Dyer observed some tenderness to palpation along the long finger and ring finger dorsal metacarpals, thumb base and radial wrist and some pain with Tinel's and Durkin's tests. Dr. Dyer diagnosed right hand arthralgia and right-hand crush injury.

On January 1, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period December 26, 2020 through January 1, 2021. On the reverse side of the claim form the employing establishment indicated that she received continuation of pay (COP) from November 11 through December 26, 2020 and noted that her disability should begin on December 27, 2020. Appellant thereafter filed additional CA-7 forms requesting wage-loss compensation for continued disability through January 29, 2021.

In an attending physician's report (Form CA-20) and a letter, both dated January 6, 2021, Dr. Dyer noted that on November 10, 2020 appellant crushed her hand in a mail truck door at work. He reported that she was totally disabled from work from November 10, 2020 through January 10, 2021. Dr. Dyer indicated that appellant could return to part-time, modified-duty work.

On January 19, 2021 appellant accepted a part-time, limited-duty position as a modified city carrier.

In a January 25, 2021 letter, Dr. Dyer recommended that appellant remain off work until February 3, 2021. He explained that she attempted to return to work on January 21, 2021, but had a severe exacerbation of pain.

³ The Board notes that the March 17, 2021 OWCP decision notes the beginning date of the claimed period as December 27, 2021. However, this appears to be a typographical error as appellant's claim form notes the beginning date as December 27, 2020.

In a February 4, 2021 letter by Mallory K. Pingeton, a physician assistant, who explained that appellant was seen by Dr. Dyer on February 3, 2021 and was found to have right intersection syndrome. She opined that this was likely a complication from appellant's November 2020 hand crush injury. Ms. Pingeton recommended that appellant remain off work until March 17, 2021.

In a February 11, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional evidence required and afforded her 30 days to submit the requested evidence.

Appellant subsequently resubmitted the February 4, 2021 letter by Ms. Pingeton.

By decision dated March 17, 2021, OWCP denied appellant's wage-loss compensation claims, finding that she had not established disability from work causally related to the accepted November 10, 2020 employment injury.

On April 6, 2021 appellant timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and submitted additional medical evidence.

In a letter dated May 21, 2021, OWCP's hearing representative advised appellant that a telephonic hearing would be held on June 24, 2021 at 2:30 p.m. Eastern Standard Time (EST).⁴ The hearing representative also provided appellant with the toll-free telephone number and passcode to access the hearing. Appellant did not appear for the hearing by telephone at the appointed time.

By decision dated July 7, 2021, OWCP found that appellant failed to appear at the oral hearing and abandoned her request. It noted that an oral hearing was scheduled to be conducted by telephone on June 24, 2021 and that appellant received written notification of the hearing 30 days in advance of the hearing. Next, OWCP indicated that appellant failed to appear for the hearing and there was no indication in the file that she contacted it either prior to or subsequent to the scheduled hearing to request a postponement or explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ The term disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁷ For each period of disability claimed, the employee has the

⁴ The hearing notice was addressed to appellant at her last known address,

⁵ *Supra* note 1.

⁶ *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁸

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence.⁹ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.¹⁰

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability for the period December 27, 2020 through January 29, 2021 causally related to the accepted November 10, 2020 employment injury.

In support of her claim for compensation, appellant submitted medical reports from Dr. Dyer. In a December 9, 2020 report, Dr. Dyer described the November 10, 2020 employment injury and conducted an examination. He noted that appellant tried to return to work on November 28, 2020, but experienced significant pain. Dr. Dyer opined that she should remain off work. In a January 6, 2021 CA-20 form, he further indicated that appellant was totally disabled from work from November 10, 2020 through January 10, 2021. Furthermore, in a January 25, 2021 letter, Dr. Dyer recommended that she remain off work until February 3, 2021. He explained that appellant attempted to return to work on January 21, 2021, but had a severe exacerbation of pain. Although he opined that she was unable to work during the claimed period of disability, Dr. Dyer did not provide any medical reasoning to support his opinion on disability.¹² He merely referenced that appellant experienced a severe exacerbation of pain when she attempted to return to work. The Board has found that, when a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he or she hurt too much to work, without objective findings of disability being shown, the physician has not provided a

⁸ *B.O.*, Docket No. 19-0392 (issued July 12, 2019); *D.G.*, Docket No. 18-0597 (issued October 3, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁹ *L.O.*, Docket No. 20-0170 (issued August 13, 2021); *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *V.A.*, Docket No. 19-1123 (issued October 29, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

¹¹ See *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹² *R.C.*, Docket No. 17-0748 (issued July 10, 2018); *Dean E. Pierce*, 40 ECAB 1249 (1989).

rationalized medical opinion on the issue of disability.¹³ For these reasons, the Board finds that Dr. Dyer's reports lack sufficient medical reasoning to establish that appellant was unable to work during the claimed period.

The report from the physician assistant is also of no probative value to establish appellant's wage-loss compensation claim because physician assistants are not considered physicians as defined under FECA.¹⁴

As the medical evidence of record lacks rationalized medical evidence establishing that appellant was disabled from work for the period December 27, 2020 through January 29, 2021 due to the accepted November 10, 2020 employment injury, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹⁵ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.¹⁶ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record.¹⁷

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.¹⁸

¹³ *B.F.*, Docket No. 19-0123 (issued May 13, 2019); *P.D.*, Docket No. 14-744 (issued August 6, 2014); *G.T.*, 59 ECAB 447 (2008).

¹⁴ Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also* *S.A.*, Docket No. 21-0813 (issued December 27, 2021); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹⁵ 20 C.F.R. § 10.616(a).

¹⁶ *Id.* at § 10.617(b).

¹⁷ *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

¹⁸ 20 C.F.R. § 10.622(f).

The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing.

Following OWCP's March 17, 2021 decision denying appellant's wage-loss compensation claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a May 21, 2021 letter, OWCP's Branch of Hearings and Review notified her that it had scheduled a telephonic hearing for June 24, 2021 at 2:30 p.m. EST. OWCP mailed the notice to appellant's last known address of record. The Board has held that absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule.²⁰ Appellant failed to call in for the scheduled hearing using the provided telephone number. She did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining failure to appear, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.²¹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work for the period December 27, 2020 through January 29, 2021 causally related to the accepted November 10, 2020 employment injury. The Board further finds that OWCP properly determined that appellant abandoned her request for an oral hearing.

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (September 2020); *see also* *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

²⁰ *See V.C.*, *supra* note 17; *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

²¹ *See L.T.*, Docket No. 20-1539 (issued August 2, 2021).

ORDER

IT IS HEREBY ORDERED THAT the March 17 and July 7, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 18, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board